

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

UNITED STATES OF AMERICA,
and the STATE OF MISSISSIPPI,

Plaintiffs,

v.

THE CITY OF JACKSON, MISSISSIPPI,
Defendant.

Case No. 3:12-cv-790-HTW-LGI
(Clean Water Act Case)

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE CITY OF JACKSON, MISSISSIPPI,
Defendant.

Case No. 3:22-cv-00686-HTW-LGI
(Safe Drinking Water Act Case)

**MOTION FOR ORDER TO RELEASE
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM RECIPIENTS LIST**

The Interim Third-Party Manager (ITPM), Ted Henifin, by and through undersigned counsel, moves this Court to enter an order requiring (1) the United States to release on or before March 31, 2024, to the ITPM a list, in CSV (comma-separated values) format, containing the name and address of recipients of the Supplemental Nutrition Assistance Program (“SNAP”), 7 U.S.C.

§ 2011 *et seq.*, residing within zip codes served by JXN Water¹ and (2) requiring the United States to provide the ITPM with updated lists on the first business day of each calendar quarter thereafter until the stipulated orders in the captioned matters are no longer in effect, the ITPM is no longer an officer of this Court, or upon further notice by the Court, whichever occurs first. In support, the ITPM states as follows.

I. BACKGROUND

The President of the United States and the Governor of Mississippi declared a state of emergency in August 2022 to address the drinking water crisis in the City of Jackson. These declarations resulted in the unprecedented and extraordinary use of powers under the Safe Drinking Water Act and other emergency statutes to provide federal funding and authority to stabilize and rehabilitate the City of Jackson's water system. At the time of these declarations, the United States and State of Mississippi had also already reopened decade-long litigation against the City regarding the numerous discharges of untreated raw sewage from the City's sewer system.

To address the drinking water emergency, the United States, the State of Mississippi, through the Mississippi State Department of Health, and the City of Jackson agreed on November 29, 2022, for this Court to order the appointment of Ted Henifin as the ITPM. *See* Water ISO, Dkt. No. 6. The order instructed the ITPM to operate, maintain, manage, and control the City of Jackson's water system and the Water/Sewer Business Administration. *See id.* Subsequently, on October 5, 2023, the Court entered an additional stipulated order, Sewer ISO, Dkt. No. 72, which gave the ITPM control of the City's failing sewer system.

¹ Jackson, MS – 39056, 39174, 39201, 39202, 39203, 39204, 39205, 39206, 39207, 39209, 39210, 39211, 39212, 39213, 39215, 39216, 39217, 39225, 39235, 39236, 39250, 39269, 39271, 39282, 39284, 39286, 39289, 39296, and 39298. Byron, MS – 39170, 39212 and 39727.

Under the stipulated orders, the ITPM was granted “the full power and authority necessary to carry out the requirements” of the orders and “all powers and authority under all applicable state and federal law[.]” Water ISO, Dkt. No. 6 at 8; Sewer ISO, Dkt. No. 72 at 11. To address the drinking water emergency, the Water ISO instructed the ITPM, as an officer of the court, to address the conditions of the water system that present or may present an imminent and substantial endangerment to the residents of the City and to increase the water system’s stability. Water ISO, Dkt. No. 6 at 3, 8. To do so, the Water ISO authorized the ITPM to adjust the rates, rate structure, or fees of the City’s water system. *Id.* at 12 (authorizing the ITPM to adopt rates and fees if the City failed to adopt the ITPM’s proposed rates after consultation). The stipulated order empowering the ITPM to control and manage the City’s sewer system, to which the United States and State of Mississippi also agreed, likewise granted the ITPM full power and authority to adjust the sewer service charges and fees as necessary to address the City’s sewer repairs and upgrades. Sewer ISO, Dkt. No. 72 at 17 (authorizing the ITPM to adjust sewer rates and fees if, after consulting with the City, the City failed to adopt the ITPM’s proposed rates).

While significant progress has been made to address the drinking water and sewer crises, the conditions resulting in the emergencies have not been fully abated. In November 2023, the ITPM determined that JXN Water must adjust water and sewer service fees and rates to effectively repair and stabilize the City’s water and sewer systems. As a result, the ITPM adopted new drinking water and sewer rate classifications pursuant to his authority under the drinking water and sewer orders. Water ISO, Dkt. No. 6 at 11-12; Sewer ISO, Dkt. 72 at 17. Specifically, the ITPM adopted rates whereby SNAP recipients will pay \$10 per month while other residential customers will pay a minimum bill of \$40 per month for water and sewer service. The ITPM determined that this rate structure will place the City’s water and sewer service on firm financial footing, as is necessary to

end the drinking water and sewer crises, while providing affordable rates for low-income residents of the City. Such rates are essential in Jackson where as many as 25% of the City's residents live in poverty. *See Quick Facts, Jackson city, Mississippi*, U.S. CENSUS BUREAU (2022), <https://www.census.gov/quickfacts/fact/table/jacksoncitymississippi/PST045222> (last visited Mar. 4, 2024). The ITPM's tiered rates therefore ensure JXN Water can efficiently and rapidly provide access to safe drinking water and appropriate sewer services for all ratepayers.

The ITPM now seeks to implement the Court's updated water and sewer rate classifications, including a rate category for approximately up to 20,000 Jackson ratepayers who are eligible for federal SNAP benefits. To implement the rates, JXN Water must immediately identify ratepayers who are receiving SNAP benefits so they can be assigned the new SNAP rate class. The only practical way to timely implement that rate classification is to cross-compare the SNAP-recipient list for the zip codes noted above with JXN Water's ratepayer list.² If the ITPM is denied access to the list it will frustrate his obligation to implement the rates that were recently imposed and will take years to reach only a small percentage of SNAP recipients that could otherwise be reached with access to the list.

II. Arguments

The U.S. Congress established the SNAP program to allocate funds for states to disburse among eligible households to purchase nutritious food. 7 U.S.C. § 2013. To participate, state agencies must provide a plan of operation for their SNAP program and are required to administer their program in line with regulations of the Food and Nutrition Service (FNS) within the United

² Because JXN Water needs the SNAP list exclusively to cross reference its customer accounts with the SNAP recipient list, only individuals who have their own, individual account with JXN Water will be eligible for the discount and will be cross-referenced with the SNAP List. As a result, JXN Water will not seek nor have knowledge of SNAP recipients living in group homes or otherwise on the SNAP list but not on the JXN Water customer list.

States Department of Agriculture (USDA). *Id.* § 2020(a), (d); *see* 7 C.F.R. § 271.1 *et seq.* The USDA approves state plans of operation, audits and investigates SNAP records from state agencies, and may enforce federal regulations governing the program by withholding funds or pursuing injunctive relief through the Department of Justice. 7 U.S.C. § 2020(a)(3), (d), (g).

By statute, state agencies implementing SNAP must establish “safeguards which prohibit the use or disclosure of information obtained from applicant households” but:

(A) the safeguards shall permit-

(i) the disclosure of such information to persons directly connected with the administration or enforcement of the provisions of this chapter, regulations issued pursuant to this chapter, Federal assistance programs, or federally-assisted State programs....

7 U.S.C. § 2020(e)(8)(A)(i); *see also* 7 C.F.R. § 272.1(c)(1) (“Use or disclosure of information obtained from SNAP applicant or recipient households shall be restricted to.... [p]ersons directly connected with the administration or enforcement of the provisions of the Food and Nutrition Act of 2008 or regulations, other Federal assistance programs, federally-assisted State programs providing assistance on a means-tested basis to low income individuals....”). State agencies implementing SNAP may also enter into agreements with other state agencies implementing school lunch and breakfast programs to ensure that low-income students are automatically certified as eligible for free lunches and breakfasts in local schools. *See* 7 U.S.C. § 2020(u); 7 C.F.R. § 245.6(b)(1) (describing the “direct certification” of children in families receiving SNAP benefits by local educational agencies into the free breakfast and lunch programs through data matching of children enrolled in their school and SNAP lists provided by the state).

The Mississippi Department of Human Services (MDHS) administers the SNAP program in Mississippi. Under MDHS’s regulations implementing SNAP, recipient information is protected but may be disclosed to persons administering one of a series of listed federal assistance programs

and “[a]ny other federally aided means-tested programs.” 18-14 MISS. CODE. R. § 1.11.A (2022); *see also* MISS. CODE ANN. § 43-1-19 (allowing disclosure of SNAP information in accordance with federal regulations).

This Court has authority to order the United States to release a list of SNAP recipients to the ITPM because the SNAP rate classification, implemented by the ITPM, an officer of this federal Court pursuant to a federal court order agreed to by the United States and the State of Mississippi, is the substantive and legal equivalent of a “federal assistance program.” 7 U.S.C. § 2020(e)(8)(A)(i).³ Such order should direct the release of the SNAP list subject to the data and security protocols agreed to by the United States and should direct that the list only be released to JXN Water official who are subject to an appropriate confidentiality agreement.

A. JXN Water’s tiered water and sewer rates constitute a federal assistance program as the ITPM adopted the rates as an officer of the Court and pursuant to a federal court order to assist residents of limited means through a federally-declared public health crisis.

The U.S. Congress specifically included “Federal assistance programs” and “federally-assisted State programs” as exemptions to the general non-disclosure policy in state SNAP operating plans. 7 U.S.C. § 2020(e)(8)(A)(i). This provision allows state agencies implementing SNAP according to their operating plans to share information rapidly with federal assistance programs and facilitates the efficient inclusion of persons with limited means into a range of assistance programs. Otherwise, eligible individuals would have to make multiple applications to a variety of state and federal programs. To avoid this result, Congress allowed the sharing of SNAP information “only for such administration” of programs furthering federal assistance to the needy. *Id.* § 2020(e)(8)(A)(ii).

³ While the United States has asserted that it does not maintain the list, it should be clear in its briefing on this motion as to what steps it would have to take in order to provide the list to the ITPM on a quarterly basis.

The ITPM's SNAP rate classification is a federal assistance program that is unique among public utilities and exclusively directed to the congressionally-authorized purpose of providing assistance to needy households. *See id.* § 2020(e)(8)(A). Unlike other water and sewer utilities, the ITPM adopted these rates in his role as a federal trustee pursuant to a federal court order. *See* Dkt. Nos. 6 and 72. Similarly, this act, by a federal trustee and officer of this court, derives directly from federal court orders to address an ongoing water and sewer crisis stemming from violations of federal law. The United States and State of Mississippi initiated litigation to resolve these emergencies, agreed to the stipulated orders authorizing the ITPM to adopt rates for water and sewer services, and did not object to the ITPM's proposed rate classification for SNAP recipients.

Likewise, the ITPM, through JXN Water, adopted the SNAP rate classification to ensure that water and sewer services remain affordable to SNAP-eligible ratepayers. Like the provision of food assistance through SNAP, assisting low-income residents in acquiring water and sewer services is necessary to safeguard their health and well-being. *See* 7 U.S.C. § 2011. A 2016 USDA study reported bottled water sales accounted for 1.2 percent, or \$78 million, of SNAP benefits used nationwide. *See* Steven Garaska et al., *Foods Typically Purchased by Supplemental Nutrition Assistance Program (SNAP) Households*, U.S. DEP'T OF AG. at 17 (Nov. 2016) (available at: <https://www.fns.usda.gov/snap/foods-typically-purchased-supplemental-nutrition-assistance-program-snap-households>). In the end, the ITPM's adopted rate structure is an action by a federal agent pursuant to a federal court order in response to a federal disaster declaration that advances the Congress's purpose of providing additional nutrition to the needy and is appropriately characterized as an emergency "federal assistance program." *See* 7 U.S.C. § 2020(e)(8)(A)(i).

B. No alternative methods of enrolling Jackson residents will reach the meaningful participation levels necessary to both resolve the water crisis in Jackson and help residents with limited means.

The ITPM needs the list of SNAP recipients in the City to effectively implement his SNAP rate classification assistance program. Studies show that the SNAP program, a long running and well-funded government assistance program, still only achieves enrollments rates of approximately 71% of eligible participants in Mississippi.⁴ This participation rate is still more than twice the enrollment rates, however, of other income-based social programs which struggle to achieve even a 30% participation. *See* Suzanne Macartney & Robin Ghertner, U.S. DEP'T HEALTH & HUMAN SERVS. at 2 (Nov. 2021) (Table 1 reports a 63% overall participation rate in SNAP and only a 20% participation rate in the Low Income Home Energy Assistance Program (LIHEAP) and 28% participation rate in Temporary Assistance for Needy Families (TANF)). Without the list of SNAP recipients, JXN Water will not achieve participation rates comparable to SNAP, a well-funded, well-known, and longstanding national program. JXN Water will instead expend immense resources and critical time, otherwise spent repairing the City's water and sewer systems, attempting to enroll SNAP recipients. The experiences of other income-based federal, state, and local programs demonstrates that, after all this expense, participation in JXN Water's special rate class for low-income residents will likely not exceed 30% of eligible customers. As a result, absent the ability to cross reference its customer list to a list of SNAP recipients in JXN Water's service area, there is no other practical way to identify approximately up to 20,000 customer accounts that the ITPM anticipates are eligible for this rate classification.

⁴ In Mississippi, only 71 percent of people eligible for SNAP benefit participate. The national average is 84 percent. See: <https://www.fns.usda.gov/usamap#> (Last visited on March 4, 2024).

CONCLUSION

For the reasons above, the ITPM requests that the Court enter an order to require the United States to (1) release a list of SNAP recipients residing in the zip codes noted above to the ITPM by March 31, 2024, for the limited purpose of allowing the ITPM to apply the recently-adopted SNAP water/sewer rate classification to those individuals/households and (2) quarterly thereafter provide the ITPM with an update to that list until the earlier of (A) the ITPM is no longer an officer of the Court, (B) the Stipulated Orders have been terminated, or (C) upon further order of the Court. Finally, the order should also specify that the list shall not be made public, nor released to any entity by the ITPM.

Respectfully submitted this 5th day of March, 2024.

/s/ Malissa Wilson

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